

# EXHIBIT 1

SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

**GUAYAKI SUSTAINABLE RAINFOREST PRODUCTS, INC., a**  
**California corporation.**

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**KIRSTIEMA COWAN, individually, and on behalf of other members of**  
**the general public similarly situated.**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ENDORSED  
FILED**

**JAN 15 2014**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA**

**NOTICE:** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): **Hall of Justice**  
**600 Administration Drive**  
**Santa Rosa CA 95403**

CASE NUMBER:  
(Número del Caso):

**SCV-25487**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Paul Mankin, IV, 8730 Wilshire Blvd., Suite 310, Los Angeles, CA 90211, (310) 776-6336**

DATE:  
(Fecha)

**JAN 15 2014**

**JOSE O. GUILLEN**

Clerk, by  
(Secretario)

**LUPE BEAS**

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **GUAYAKI SUSTAINABLE RAINFOREST PRODUCTS, INC.**

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☒ by personal delivery on (date): **2/12/14**

ENDORSED  
FILED

JAN 15 2014

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

1 L. Paul Mankin, IV (SBN 264038)  
2 LAW OFFICES OF L. PAUL MANKIN, IV  
3 8730 Wilshire Blvd., Suite 310  
4 Beverly Hills, California 90211  
5 Tel: (310) 776-6336  
6 Fax: (323) 207-3885  
7 pmankin@paulmankin.com

8 Attorneys for Plaintiff Kirstiema Cowan

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SONOMA

11 KIRSTIEMA COWAN, individually, and  
12 on behalf of other members of the general  
13 public similarly situated,

14 Plaintiff,

15 vs.

16 GUAYAKI SUSTAINABLE  
17 RAINFOREST PRODUCTS, INC., a  
18 California corporation,

19 Defendant.

Case No.: SCV- 254877

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law  
(Cal. Business & Professions Code  
§§ 17200 *et seq.*);
- (2) Violation of Unfair Competition Law  
(Cal. Business & Professions Code  
§§ 17500 *et seq.*);
- (3) Violation of the Consumers Legal  
Remedies Act (Cal. Civil Code §§ 1750 *et*  
*seq.*);
- (4) Negligent Misrepresentation; and
- (5) Breach of Quasi-Contract.

Jury Trial Demanded

BY FAX

1 Plaintiff Kirstiema Cowan ("Plaintiff"), individually and on behalf of all other members  
2 of the public similarly situated, allege as follows:

### 3 NATURE OF THE ACTION

4 1. Plaintiff brings this class action Complaint against Defendant GUAYAKI  
5 SUSTAINABLE RAINFOREST PRODUCTS, INC. (hereinafter "Defendant" or "Guayaki")  
6 to stop Defendant's practice of releasing misbranded products into the stream of commerce  
7 and to obtain redress for all nationwide consumers ("Class Members") who purchased, within  
8 the applicable statute of limitations period, a Guayaki product which list either "organic  
9 evaporated cane juice" or "evaporated cane juice" as an ingredient (hereinafter collectively  
10 referred to as the "Class Products").

11 2. Guayaki is a California company that sells and distributes the Class Products at  
12 premium prices throughout the United States. Guayaki's principal place of business is in  
13 Sebastopol, California.

14 3. Guayaki knows that a majority of its consumers are health conscious and prefer  
15 foods lacking added sugar. Guayaki recognizes that health claims drive sales, and actively  
16 promotes the health benefits of its products.

17 4. For example, Guayaki makes the following representations regarding the Class  
18 Products:

- 19 • The uplifting and nourishing choices of health-minded individuals, yerba mate  
20 boasts 24 vitamins and minerals.
- 21 • Yerba mate, with naturally occurring caffeine, triumphs as the most balanced,  
22 delivering both energy and nutrition.
- 23 • Yerba Mate Provides a Wealth of Nutrients.
- 24 • Yerba mate is more nutritious than green tea.

25 5. Guayaki's website, <http://guayaki.com>, is also largely dedicated to promoting  
26 the nutritional and health aspects of the Class Products.

27 6. However, Guayaki sought to conceal the added sugar in the Class Products, by  
28 failing to list "sugar" or "dried cane syrup" as an ingredient. Instead, the labels lists either

“organic evaporated cane juice” or “evaporated cane juice” as an ingredient, as depicted below, despite the fact that the U.S. Food and Drug Administration (“FDA”) has specifically warned companies that term is false and misleading. In so doing, Guayaki has violated California’s Sherman Law and California consumer protection statutes.



### Traditional Mate (Case of 12)

Price: \$39.99

6 Product Reviews | Write a Review

Traditional Mate is a great energizer for those who love the flavor of mate, with a touch of sweetness. [FREE SHIPPING INCLUDED]

Quantity: 1

Free Shipping Included

Click to Enlarge



Like Tweet

Nutritional Info

Shipping Info

Reviews

### Supplement Facts

Serving Size: 8 fluid ounces (226ml)  
Servings Per Container: 2

	Amount Per Serving	% Daily Value*
Calories	39	
Total Carbohydrate	10 g	3%
• Sugars	10 g	
Proprietary Blend	3.03 g	
• Organic Guayaki Yerba Mate (leaf)		
• Organic Guayaki Yerba Mate (extract)		
• Organic Rose hips		

\*Percentages daily values are based upon a diet of 2000 calories per day.  
†Daily Value not established

Other Ingredients: purified water, organic evaporated cane juice, organic lemon juice concentrate, citric acid.

- Organic Certified
- Fair Trade Certified
- Gluten Free
- Vegan
- Soy Free
- Dairy Free
- Kosher

Each Bottle contains:

16 fluid ounces  
140 mg. Caffeine

Yerba Mate:

- Helps Stimulate Focus and Clarity\*
- Boosts Physical Energy\*
- Traditionally Used to Support Weight Loss Programs that Include a Balanced Diet and Exercise\*
- Aids Elimination\*
- Contains Antioxidants\*

7. This action is not pre-empted by federal law. State law claims based on a food product’s non-conforming, misleading or deceptive label are expressly permitted where, as here, they impose legal obligations identical to the Food Drug and Cosmetics Act (“FDCA”) of 1938 and corresponding FDA regulations, including FDA regulations concerning naming and labeling.

## NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT

8. In recent years, Americans have become increasingly health conscious, with strong justification. Numerous independent studies have come to the same conclusion: an informed, healthy, and balanced diet is critical to a long and healthy life.<sup>1</sup> Those same studies have found that poor dietary habits are one of the leading causes of preventable deaths. Proper dietary habits regarding sugar intake have been found to have a significant correlation to improving overall health while lessening the risks of diabetes and cardiovascular diseases. Consequently, maintaining a diet low in sugar has become important to a growing number of consumers.

9. Guayaki is the largest United States manufacturer and distributor of Yerba Mate -- a caffeinated South American drink brewed like tea from the dried leaves of the mate plant.

10. To profit from the public's increasing focus on dietary health, Guayaki has, at various times during the class period, advertised, marketed, and placed a label on its misbranded Class Products, listing either "organic evaporated cane juice" or "evaporated cane juice" as an ingredient.

11. The Food Drug and Cosmetics Act of 1938 provides the Food and Drug Administration ("FDA") with the authority to oversee the safety of food, drugs and cosmetics. 21 U.S.C. §301, *et seq.* Pursuant to this authority, the FDA has promulgated regulations and issued guidance that spell out in painstaking detail how ingredients are to be declared on the label of foods.

12. If a manufacturer makes a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled. As described more fully below, Defendant has made, and continues to make false and deceptive claims in violation of federal and California laws that govern the types of representations that can be made on food labels. These laws recognize that reasonable

<sup>1</sup> See, e.g., "A Statement for Healthcare Professionals From the Nutrition Committee of the American Heart Association" <http://circ.ahajournals.org/content/102/18/2284.long>

1 consumers are likely to choose products claiming to have a health or nutritional benefit over  
2 otherwise similar food products that do not claim such properties it benefits or that disclose  
3 certain ingredients. More importantly, these laws recognize that the failure to disclose the  
4 presence of risk-increasing ingredients, like sugar, is deceptive because it conveys to  
5 consumers the net impression that a food makes only positive contributions to a diet, or does  
6 not contain any ingredients at levels that raise the risk of diet related disease or health-related  
7 condition.

8 13. Defendant has made and continues to make, unlawful ingredient claims on the  
9 food labels of its misbranded Class Products that are prohibited under applicable federal and  
10 California laws. Under the FDCA section 403(a), food is considered misbranded if "its  
11 labeling is false or misleading in any particular," or if it does not contain certain information  
12 on it label or its labeling. 21 U.S.C. § 343(a).

13 14. Under FDCA, the term "false" has its usual meaning of "untruthful," while the  
14 term "misleading" is a term of art. Misbranding reaches not only false claims, but those  
15 claims that might be technically true, but still misleading. If any one representation in the  
16 labeling is misleading, the entire food is misbranded. No other statement in the labeling cure  
17 a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking  
18 and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-*  
19 *O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1975). Under the FDCA, it is not necessary to  
20 prove that anyone was actually misled.

21 15. Defendant's Class Products are also misbranded under applicable California  
22 state law. Specifically, California's Sherman Law incorporates "[a]ll food labeling  
23 regulations and any amendments to those regulations adopted pursuant to the FDCA" as "the  
24 food labeling regulations of this state." Cal. Health & Saf. Code § 110100(a). "Any food is  
25 misbranded if its labeling does not conform with the requires for nutrient content or health  
26 claims as set forth in Section 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and the  
27 regulations adopted pursuant thereto." Cal. Health & Saf. Code § 110670. State law claims  
28 based on a food product's non-conforming, misleading or deceptive label are expressly



1 permitted when they impose legal obligations identical to the FDCA and corresponding FDA  
2 regulations, including FDA regulations concerning naming and labeling. *In re Farm Raised*  
3 *Salmon Cases*, 42 Cal. 4th 1077, 1094-95 (2008). Guayaki's conduct thus constitutes a  
4 violation of California law for which Plaintiff and class members are entitled to seek redress  
5 under the UCL, CLRA and other California consumer protection statutes.

6 16. By way of this Complaint, Plaintiff seeks to impose requirements that are  
7 identical to and do not exceed the federal requirements. As such, this action is not pre-empted  
8 by federal law. State law claims based on a food product's non-conforming, misleading or  
9 deceptive label are expressly permitted where, as here, they impose legal obligations identical  
10 to the FDCA and corresponding FDA regulations, including FDA regulations concerning  
11 naming and labeling.

12 17. Defendant has made, and continues to make, false and deceptive claims in its  
13 misbranded Class Products in violation of federal and California laws. In particular,  
14 Defendant has violated federal and California labeling regulations by listing sugar and/or  
15 sugar cane syrup as "evaporated cane juice."

16 18. FDA regulations require ingredients to be declared by their common or usual  
17 names. 21 C.F.R. § 101.4(a)(1); 21 C.F.R. § 101.3; 21 C.F.R. § 102.5. According to the  
18 FDA, the term "evaporated cane juice" is not the common or usual name for any type of  
19 sweetener, including sugar or cane products. Sugar or sucrose is defined by regulation in 21  
20 C.F.R. § 101.4(b)(2) and 21 C.F.R. § 184.1854, as the common or usual name for material  
21 obtained from the crystallization from sugar cane or sugar beet juice that has been extracted  
22 by pressing or diffusion, then clarified and evaporated. Cane syrup is defined by regulation in  
23 21 C.F.R. § 168.130. The common or usual name for the solid or dried form of cane syrup is  
24 "dried cane syrup." Sugar cane products are required by regulation (21 C.F.R. § 101.4) to be  
25 described by their common or usual names, sugar (21 C.F.R. § 101.4(b)(20) and 21 C.F.R. §  
26 184.1854) or cane syrup (21 C.F.R. § 168.1340).

27 19. Furthermore, in 2009 the FDA issued its Guidance to the Industry regarding  
28



1 ingredients declared as evaporated cane juice.<sup>2</sup> In its Guidance, the FDA advised the food  
 2 industry not to list "evaporated cane juice" as an ingredient on product labels "because that  
 3 term falsely suggests that the sweeteners are juice." Nevertheless, Guayaki has made, and  
 4 continues to make, false, and deceptive claims on its misbranded Class Products in violation  
 5 of federal and California laws that govern the types of representations that can be made on  
 6 food labels.

7 20. Defendant's violations of the law include, but not limited to, the illegal  
 8 advertising, marketing, distribution, delivery, and sale of Guayaki's misbranded Class  
 9 Products to consumers in California and throughout the United States. As such, Guayaki's  
 10 misbranded Class Products cannot legally be manufactured, advertised, distributed, held, or  
 11 sold.

12 21. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to  
 13 cease circulation of the misbranded Class Products and an award of damages to the Class  
 14 Members, together with costs and reasonable attorneys' fees.

#### 15 JURISDICTION AND VENUE

16 22. This class action is brought pursuant to California Code of Civil Procedure  
 17 section 382. The damages and restitution sought by Plaintiff exceeds the minimal jurisdiction  
 18 limits of the Superior Court and will be established according to proof at trial.

19 23. This Court has jurisdiction over this action pursuant to the California  
 20 Constitution, Article VI, section 10, which grants the Superior Court "original jurisdiction in  
 21 all causes except those given by statute to other courts." The statutes under which this action  
 22 is brought do not specify any other basis for jurisdiction.

23 24. This Court has jurisdiction over the Defendant because, upon information and  
 24 belief, Defendant is either a citizen of California, has sufficient minimum contacts in  
 25 California, or otherwise intentionally avails itself of the California market so as to render the

26 <sup>2</sup> Guidance for Industry: Ingredients declared as Evaporated Cane Juice; Draft Guidance (Oct.  
 27 2009) *available at*  
 28 <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Labeling/Nutrition/ucm181491.htm> (last visited Apr 9, 2013).

1 exercise of jurisdiction over it by the California courts consistent with traditional notions of  
2 fair play and substantial justice.

3 25. Venue is proper in this Court because, upon information and belief, Defendant  
4 resides and transacts business in this County and the acts and omissions alleged herein took  
5 place in this County.

#### 6 THE PARTIES

7 26. Plaintiff Kirstiema Cowan is a citizen and resident of the State of California,  
8 County of Los Angeles.

9 27. Defendant GUAYAKI SUSTAINABLE RAINFOREST PRODUCTS, INC. is a  
10 California corporation with its principal office at 6784 Sebastopol Ave., Sebastopol,  
11 California 95742.

12 28. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
13 acts and omissions alleged herein was performed by, or is attributable to, GUAYAKI  
14 SUSTAINABLE RAINFOREST PRODUCTS, INC. and/or its employees, agents, and/or third  
15 parties acting on its behalf, each acting as the agent for the other, with legal authority to act on  
16 the other's behalf. The acts of any and all of Defendant's employees, agents, and/or third  
17 parties acting on its behalf, were in accordance with, and represent, the official policy of  
18 Defendant.

19 29. Plaintiff is informed and believes, and thereon alleges, that said Defendant is in  
20 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,  
21 occurrences, and transactions of each and all its employees, agents, and/or third parties acting  
22 on its behalf, in proximately causing the damages herein alleged.

23 30. At all relevant times, Defendant ratified each and every act or omission  
24 complained of herein. At all relevant times, Defendant, aided and abetted the acts and  
25 omissions as alleged herein.

#### 26 PLAINTIFF'S FACTS

27 31. Plaintiff Kirstiema Cowan is a health-conscious person with a history of  
28 diabetes in her family who routinely purchases and pays a premium for products advertised to

1 be healthy and/or low in sugar.

2 32. Plaintiff regularly purchased the Class Products, including, but not limited to,  
3 Pure Heart Raspberry Mate, Pure Empower Mint Mate, and Pure Mind Pomegranate Mate,  
4 approximately four to five times per week between May and August of 2013. During this  
5 time period Plaintiff purchased the Class Products from various Sprouts Farmer Market  
6 grocery stores located in Claremont and Chino Hills, California.

7 33. Plaintiff read and relied upon the ingredients listed on the Class Products at the  
8 time of purchase, and selected Guayaki products over other less expensive alternatives  
9 because she believed the Class Products contained lesser amounts of sugar and was healthier  
10 for her.

11 34. Had Guayaki properly marketed, advertised, and labeled the Class Products as  
12 containing sugar, cane sugar, cane syrup, and/or dried cane syrup, Plaintiff would not have  
13 purchased the product, would have purchased less of the product, and/or would have paid less  
14 for the product.

#### 15 CLASS ACTION ALLEGATIONS

16 35. Plaintiff brings this action, on behalf of herself and all others similarly situated,  
17 and thus, seeks class certification under California Code of Civil Procedure section 382.

18 36. The class Plaintiff seeks to represent (the "Class") is defined as follows:

19 All persons in the United States who, within the last four years,  
20 purchased Defendant's Class Products labeled with the  
21 ingredient, "evaporated cane juice" or "organic evaporated cane  
juice." ("Class Members").

22 37. As used herein, the term "Class Members" shall mean and refer to the members  
23 of the Class described above.

24 38. Excluded from the Class are Guayaki, its affiliates, employees, agents, and  
25 attorneys, and the Court.

26 39. Plaintiff reserves the right to amend the Class, and to add additional subclasses,  
27 if discovery and further investigation reveals such action is warranted.

28 40. There is a well-defined community of interest in the litigation and the class is

1 readily ascertainable:

- 2 (a) Numerosity: Upon information and belief, the members of the class  
3 (and subclass) are so numerous that joinder of all members would be  
4 unfeasible and impractical.
- 5 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately  
6 protect the interests of each Class Member with whom she has a well-  
7 defined community of interest, because Plaintiff bought Guayaki's  
8 misbranded Class Products during the Class Period. Guayaki's  
9 unlawful, unfair and/or fraudulent actions concerns the same business  
10 practices described herein irrespective of where they occurred or were  
11 experiences. Plaintiff's claims (or defenses, if any) are typical of all  
12 Class Members as demonstrated herein.
- 13 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately,  
14 protect the interests of each class member with whom she has a well-  
15 defined community of interest and typicality of claims, as demonstrated  
16 herein. Plaintiff acknowledges that she has an obligation to make  
17 known to the Court any relationship, conflicts or differences with any  
18 class member. Plaintiff's attorneys, the proposed class counsel, are  
19 versed in the rules governing class action discovery, certification and  
20 settlement. Plaintiff has incurred, and throughout the duration of this  
21 action, will continue to incur costs and attorneys' fees that have been,  
22 are and will be necessarily expended for the prosecution of this action  
23 for the substantial benefit of each class member.
- 24 (d) Superiority: The nature of this action makes the use of class action  
25 adjudication superior to other methods. A class action will achieve  
26 economies of time, effort and expense as compared with separate  
27 lawsuits, and will avoid inconsistent outcomes because the same issues  
28 can be adjudicated in the same manner and at the same time for the

entire class.

41. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members, including but not limited to:

- (a) Whether Defendant engaged in unlawful, unfair, or deceptive business practices by failing to properly package and label its food products it sold to consumers;
- (b) Whether the Class Products at issue were misbranded as a matter of law;
- (c) Whether Defendant made unlawful and misleading "evaporated cane juice" claims with respect to the Class Products sold to consumers;
- (d) Whether Defendant violated California Bus. & Prof. Code § 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and California Civ. Code § 1750, *et seq.*;
- (e) Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;
- (f) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and
- (g) The method of calculation and extent of damages for Plaintiff and Class Members

#### FIRST CAUSE OF ACTION

##### Violation of Unfair Business Practices Act

(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

42. Plaintiff incorporates by reference each allegation set forth above.

43. California Business and Professions Code Section 17200, *et seq.* prohibits "any unlawful, unfair or fraudulent business act or practice."

44. As set forth above, under FDA regulations wholly adopted by California's Sherman Act, sugar cane products must be declared by their common or usual name including, sugar, cane sugar, cane syrup, and/or dried cane syrup. Instead, Guayaki misbrands the Class Products as containing "organic evaporated cane juice" or "evaporated cane juice" as an

1 ingredient on product labels, falsely suggesting that the sweetener is a juice, in violation of  
2 California Sherman Act's advertising and misbranded food provisions. The declaration that  
3 the Class Products contain "organic evaporated cane juice" or "evaporated cane juice" is  
4 therefore an "unlawful" business practice or act under Business and Professions Code Section  
5 17200 *et seq.*

6 45. Guayaki's declaration that its Class Products contain "organic evaporated cane  
7 juice" or "evaporated cane juice" in its advertising, marketing, packaging, and labeling, as set  
8 forth herein, also constitutes an "unfair" business act or practice within the meaning of  
9 California Business and Professions Code sections 17200 *et seq.*, because any utility for  
10 Guayaki's conduct is outweighed by the gravity of the consequences to Plaintiff and Class  
11 Members and because the conduct offends public policy.

12 46. In addition, Guayaki's declaration that its Class Products contain "organic  
13 evaporated cane juice" or "evaporated cane juice" in its advertising, marketing, packaging,  
14 and labeling constitutes a "fraudulent" business practice or act within the meaning of Business  
15 and Professions Code Section 17200 *et seq.* The applicable food labeling regulations are  
16 carefully crafted to require that sugar cane products be declared by their common or usual  
17 names to protect the consuming public from being deceived. Guayaki's non-compliant  
18 advertising, marketing, packaging, and labeling declaring that the Class Products contain  
19 "organic evaporated cane juice" or "evaporated cane juice" poses the very risk of deception  
20 the regulations were promulgated to protect against.

21 47. Moreover, there were reasonable alternatives available to Guayaki to further its  
22 legitimate business interests, other than the conduct described herein. For example, Guayaki  
23 could have complied with FDA requirements by declaring the inclusion of a sugar cane  
24 product by their common or usual name including, sugar, cane sugar, cane syrup, and/or dried  
25 cane syrup product.

26 48. Guayaki used misbranded advertising, marketing, packaging, and labeling to  
27 induce Plaintiff and Class Members to purchase its Class Products. Had Guayaki not  
28 misbranded its Class Products as containing "organic evaporated cane juice" or "evaporated

1 cane juice" in its advertising, marketing, packaging, and labeling, Plaintiff and Class Members  
 2 would not have purchased the product, would have purchased less of the product and/or would  
 3 have paid less for the product. Guayaki's conduct therefore caused and continues to cause  
 4 economic harm to Plaintiff and Class Members.

5 49. Guayaki has thus engaged in unlawful, unfair, and fraudulent business acts  
 6 entitling Plaintiff and Class Members to judgment and equitable relief against Guayaki, as set  
 7 forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code  
 8 section 17203, Plaintiff and Class Members seek an order requiring Guayaki to immediately  
 9 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Guayaki to  
 10 correct its actions.

## 11 SECOND CAUSE OF ACTION

### 12 Violation of the California False Advertising Act

13 (Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

14 50. Plaintiff incorporates by reference each allegation set forth above.

15 51. Pursuant to California Business and Professions Code section 17500, *et seq.*, it  
 16 is unlawful to engage in advertising "which is untrue or misleading, and which is known, or  
 17 which by the exercise of reasonable care should be known, to be untrue or misleading."

18 52. As explained above, Guayaki misbrands the Class Products as containing  
 19 "organic evaporated cane juice" or "evaporated cane juice" as an ingredient on product labels,  
 20 falsely suggesting that the sweetener is a juice.

21 53. As also explained above, the applicable food labeling regulations are carefully  
 22 crafted to protect the consuming public from being deceived. Guayaki's non-compliant  
 23 advertising, marketing, packaging, and labeling declaring that the Class Products contain  
 24 "organic evaporated cane juice" or "evaporated cane juice" poses the very risk of deception  
 25 the regulations were promulgated to protect against.

26 54. Guayaki is a multi-million dollar company advised by skilled counsel who, on  
 27 information and belief, are or by the exercise of reasonable care should be aware of the  
 28 governing regulations and their purpose, and the fact that the labels on the Class Products do



1 not comply with them.

2 55. Guayaki's use of the misbranded labels on the Class Products therefore  
3 constitutes untrue and/or misleading advertising within the meaning of Business and  
4 Professions Code Section 17500 *et seq.*

5 56. Plaintiff, individually and on behalf of all others similarly situated, demands  
6 judgment against Guayaki for restitution, disgorgement, injunctive relief, and all other relief  
7 afforded under Business & Professions Code section 17500, plus interest, attorneys' fees, and  
8 costs.

### 9 THIRD CAUSE OF ACTION

#### 10 Violation of the Consumers Legal Remedies Act

11 (Cal. Civil Code §§ 1750 *et seq.*)

12 57. Plaintiff incorporates by reference each allegation set forth above.

13 58. This cause of action is brought pursuant to the Consumers Legal Remedies Act,  
14 California Civil Code Sections 1750 *et seq.* ("CLRA").

15 59. The CLRA has adopted a comprehensive statutory scheme prohibiting various  
16 deceptive practices in connection with the conduct of a business providing goods, property, or  
17 services to consumers primarily for personal, family or household purposes. The self-  
18 declared purposes of the act are to protect consumers against unfair and deceptive business  
19 practices and to provide efficient and economical procedures to secure such protection.

20 60. The defendant named herein is a "person" as defined by Civil Code section  
21 1761(c) because it is a corporation and/or company as set forth above.

22 61. Plaintiff and Class Members are "consumers" within the meaning of Civil Code  
23 section 1761(d) because they are individuals who purchased the products at issue in this  
24 complaint for personal and/or household use, i.e. the Class Products.

25 62. The Class Products are "goods" within the meaning of California Civil Code  
26 section 1761 (a) in that they are tangible products bought by Plaintiff and Class Members for  
27 personal, family, and/or household use.

28 63. Plaintiff's and Class Members' payments for the goods of the Class Products

1 are "transaction[s]" as defined by Civil Code section 1761 (e) because Guayaki entered into  
2 an agreement to sell those products in exchange for Plaintiff's and Class Members' monetary  
3 compensation.

4 64. Plaintiff has standing to pursue this claim as she has suffered injury in fact and  
5 has lost money as a result of Guayaki's actions as set forth herein. Specifically, Plaintiff  
6 purchased the Class Products on various occasions. Had Guayaki not marketed, advertised or  
7 included the offending labels on its Class Products, Plaintiff would not have purchased the  
8 product, would have purchased less of the product and/or would have paid less for the  
9 product.

10 65. Section 1770(a)(5) of the CLRA prohibits anyone from "[r]epresenting that  
11 goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
12 quantities which they do not have . . . ." As discussed above, Guayaki misbrands the Class  
13 Products as containing "organic evaporated cane juice" or "evaporated cane juice" as an  
14 ingredient on product labels, falsely suggesting that the sweetener is a juice, in violation of  
15 California Sherman Act's advertising and misbranded food provisions. As a result, by  
16 marketing, advertising, and employing the misbrand labels on its Class Products, Guayaki  
17 effectively represented that its products has sponsorship, approval, characteristics, ingredients,  
18 uses and benefits which it does not have under the governing law.

19 66. Section 1770(a)(7) of the CLRA prohibits anyone from "[r]epresenting that  
20 goods or services are of a particular standard, quality, or grade, or that goods are of a  
21 particular style or model, if they are of another." By marketing, advertising, and employing  
22 the misbrand labels on its Class Products, Guayaki similarly represented its juice to be of a  
23 particular standard, quality or grade which it is not under the governing law.

24 67. Section 1770(a)(9) of the CLRA prohibits anyone from "[a]dvertising goods or  
25 services with intent not to sell them as advertised." As noted above, Guayaki is a multi-  
26 million dollar company advised by skilled counsel who, on information and belief, are or by  
27 the exercise of reasonable care should be aware of the governing regulations and their  
28 purpose, and the fact that the labels on its Class Products, declaring that it contains "organic

1 evaporated cane juice” or “evaporated cane juice,” does not comply with them. By  
 2 introducing its Class Products with non-compliant labels into the stream of commerce  
 3 notwithstanding this knowledge, Guayaki thus intentionally sold a misbranded product.

4 68. Pursuant to section 1782 of the CRLA, Plaintiff notified Guayaki in writing of  
 5 the particular violations of section of the CLRA and demanded that Guayaki rectify the  
 6 problems associated with the behavior detailed above, which acts and practices are in  
 7 violation of Civil Code section 1770.

8 69. Guayaki failed to adequately respond to Plaintiff’s above-described demands  
 9 and failed to give notice to all affected consumers, pursuant to Civil Code section 1782.

10 70. Plaintiff has filed concurrently herewith the declaration of venue required by  
 11 Civil Code section 1780(d).

12 71. Plaintiff seeks an order enjoining the act and practices described above,  
 13 restitution of property, and any other relief that the court deems proper.

14 72. Currently, pursuant to California Civil Code 1782(d), with respect only to  
 15 Plaintiff’s CLRA claim, Plaintiff only seeks equitable and injunctive relief through the CLRA  
 16 and not actual damages via the CLRA. Upon Guayaki’s failure to rectify or agree to  
 17 adequately rectify the problems associated with the actions detailed above, Plaintiff will  
 18 amend her complaint to additionally seek damages, restitutionary relief, punitive damages,  
 19 attorneys’ fees and costs, and any other relief available under section 1780(a) of the CRLA.

#### 20 **FOURTH CAUSE OF ACTION**

##### 21 **Negligent Misrepresentation**

22 73. Plaintiff incorporates by reference each allegation set forth above.

23 74. Guayaki owed a duty to Plaintiff and Class Members to exercise reasonable  
 24 care in making representations about its Class Products which it offered for sale to consumers.

25 75. Guayaki knew, or should have known by the exercise of reasonable care, that  
 26 sugar cane products must be declared by their common or usual name including, sugar, cane  
 27 sugar, cane syrup, and/or dried cane syrup. Never the less, Guayaki negligently and/or  
 28 recklessly included the non-complaint labels, declaring that its Class Products contained

1 "organic evaporated cane juice" or "evaporated cane juice," on it's widely distributed Class  
2 Products that is sold nationwide and consumed by millions of people annually.

3 76. Plaintiff and Class Members reviewed, believed, and relied upon the  
4 misbranded labels on the Class Products when deciding to purchase them, and how much to  
5 pay for the Class Products.

6 77. As a direct and proximate result of Guayaki's negligent and/or reckless  
7 conduct, Plaintiff and Class Members have been damaged in an amount to be proven at trial.

### 8 FIFTH CAUSE OF ACTION

#### 9 Breach of Quasi-Contract

10 78. Plaintiff incorporates by reference each allegation set forth above.

11 79. As a direct and proximate result of Guayaki's acts, as set forth above, Guayaki  
12 has been unjustly enriched.

13 80. Through unlawful and deceptive conduct in connection with the advertising,  
14 marketing, promotion, and sale of its Class Products, Guayaki has reaped the benefits of  
15 Plaintiff's and Class Members' payments for a misbranded product.

16 81. Guayaki's conduct created a contract or quasi-contract through which Guayaki  
17 received a benefit of monetary compensation without providing the consideration promised to  
18 Plaintiff and Class Members. Accordingly, Guayaki will be unjustly enriched unless ordered  
19 to disgorge those profits for the benefit of Plaintiff and Class Members.

20 82. Plaintiff and Class Members are entitled to and seek through this action  
21 restitution of, disgorgement of, and the imposition of a constructive trust upon all profits,  
22 benefits, and compensation obtained by Guayaki from its improper conduct as alleged herein.

### 23 MISCELLANEOUS

24 83. Plaintiff and Class Members allege that they have fully complied with all  
25 contractual and other legal obligations and fully complied with all conditions precedent to  
26 bringing this action or all such obligations or conditions are excused.

### 27 REQUEST FOR JURY TRIAL

28 84. Plaintiff requests a trial by jury as to all claims so triable.

**PRAYER FOR RELIEF**

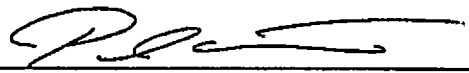
85. Plaintiff, on behalf of herself and the Class, requests the following relief:

- (a) An order certifying the Class and appointing Plaintiff as Representative of the Class;
- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) A declaratory judgment that the labels on Guayaki's Class Products are unlawful;
- (d) An order requiring Guayaki, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (e) An order requiring Guayaki to change the product packaging for its Class Products such that it complies with all applicable food labeling rules and regulations;
- (f) An order requiring Guayakiu to engage in corrective advertising regarding the conduct discussed above;
- (g) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members from the sale of misbranded Class Products during the relevant class period;
- (h) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (i) Any and all statutory enhanced damages;
- (j) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (k) Pre- and post-judgment interest; and
- (l) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

1 Dated: January 15, 2014

Respectfully submitted,

2 Law Office of L. Paul Mankin, IV

3  
4 By:   
5 L. Paul Mankin, IV

6 Attorneys for Plaintiff Kirstiema Cowan  
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>L. Paul Mankin, IV (SBN 264038)</b> <b>LAW OFFICES OF L. PAUL MANKIN, IV</b> <b>8730 Wilshire Blvd., Suite 310</b> <b>Beverly Hills, California 90211</b> TELEPHONE NO: <b>(310) 776-6336</b> FAX NO: <b>(323) 207-3885</b> ATTORNEY FOR (Name): <b>Plaintiff Kirstiema Cowan</b>		FOR COURT USE ONLY  <b>ENDORSED FILED</b>  <b>JAN 15 2014</b>  SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Sonoma</b> STREET ADDRESS: <b>600 Administration Drive</b> MAILING ADDRESS: <b>600 Administration Drive</b> CITY AND ZIP CODE: <b>Santa Rosa CA 95403</b> BRANCH NAME: <b>Hall of Justice</b>		
CASE NAME: <b>Cowan, Kirstiema v. Guayaki Sustainable Rainforest Products, Inc.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) <input type="checkbox"/> <b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: <b>8CV-254877</b>  JUDGE: <b>NANCY C. SHAFFER</b> DEPT:

Items 1-6 below must be completed (see instructions on page 2).

BY FAX

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> <b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) <input type="checkbox"/> <b>Other PIP/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W/D (23) <input type="checkbox"/> <b>Non-PIP/D/W/D (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (19) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W/D tort (35) <input type="checkbox"/> <b>Employment</b> <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> <b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <input type="checkbox"/> <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> <b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive

4. Number of causes of action (specify): **Five; Unfair Business Practices**

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 15, 2014

L. Paul Mankin, IV

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.



CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

## Other P/PPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other P/PPD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PPD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other P/PPD/WD

## Non-P/PPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice *(not medical or legal)*  
Other Non-P/PPD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach—Seller  
Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case  
Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Sister State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

1 L. Paul Mankin, IV (SBN 264038)  
2 LAW OFFICES OF L. PAUL MANKIN, IV  
3 8730 Wilshire Blvd., Suite 310  
4 Beverly Hills, California 90211  
5 Tel: (310) 776-6336  
6 Fax: (323) 207-3885  
7 pmankin@paulmankin.com

8 Attorneys for Plaintiff Kirstiema Cowan

ENDORSED  
FILED

JAN 15 2014

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SONOMA

11 KIRSTIEMA COWAN, individually, and  
12 on behalf of other members of the general  
13 public similarly situated,

14 Plaintiffs,

15 v.

16 GUAYAKI SUSTAINABLE  
17 RAINFOREST PRODUCTS, INC., a  
18 California corporation,

19 Defendant.

Case No.: SCV - 254877

DECLARATION OF KIRSTIEMA  
COWAN IN SUPPORT OF VENUE FOR  
CLASS ACTION COMPLAINT  
PURSUANT TO CIVIL CODE SECTION  
1780(d)

BY FAX

1 I, Kirstiema Cowan, declare under penalty of perjury as follows:

2 1. I make this declaration based upon my personal knowledge except as to those  
3 matters stated herein that are based upon information and belief, which I believe to be true. I  
4 am over the age of eighteen, a citizen of the State of California, and am a named Plaintiff in  
5 the litigation described in the caption page of this declaration.

6 2. This declaration is made pursuant to California Civil Code section 1780(d).

7 3. The complaint filed concurrently with this declaration contains a cause of  
8 action for violation of the Consumers Legal Remedies Act against Defendant GUAYAKI  
9 SUSTAINABLE RAINFOREST PRODUCTS, INC., which advertises, manufactures, and  
10 sells Yerba Mate – a caffeinated South American drink brewed like tea from the dried leaves  
11 of the mate plant, which includes the following products (collectively, “Yerba Mate  
12 Products”):

- 13 • Traditional Yerba Mate
- 14 • Lime Tangerine Organic Energy Shot
- 15 • Lemon Organic Energy Shot
- 16 • Chocolate Raspberry Organic Energy
- 17 • Pure Heart Raspberry Mate
- 18 • Pure Passion Mate
- 19 • Pure Empower Mint Mate
- 20 • Pure Mind Pomegranate Mate
- 21 • Pure Endurance Citrus Mate
- 22 • Pure Body – Peach Immune Support Blend
- 23 • Classic Gold Sparkling Mate
- 24 • Lemon Elation

25 4. Between May and August of 2013, I purchased Defendant’s Yerba Mate  
26 Products from various Sprouts Farmers Market grocery stores located in Claremont and Chino  
27 Hills, California.

28 5. To the best of my knowledge, based upon information and belief, Defendant  
does business in Sebastopol, California, has its principal office at 6784 Sebastopol Ave.,  
Sebastopol, California 95742, and manufacturers, distributes, sells, advertises and markets its  
products, including the products at issue in this complaint, in and from Sonoma County,

1 California. Accordingly, Sonoma County is a proper place for trial of this action.

2 I declare under penalty of perjury under the laws of California and the United States of  
3 America that the foregoing is true and correct.

4 Executed this 17 day of January 2014 in Los Angeles, California.

5  
6   
7 Kirstiema Cowan

# EXHIBIT 2

**ENDORSED  
FILED**

**MAR 14 2014**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA**

1 **CALL & JENSEN**  
A Professional Corporation  
2 Matthew R. Orr, Bar No. 211097  
Scott R. Hatch, Bar No. 241563  
3 610 Newport Center Drive, Suite 700  
Newport Beach, CA 92660  
4 Tel: (949) 717-3000  
Fax: (949) 717-3100  
5 morr@calljensen.com  
shatch@calljensen.com  
6

Attorneys for Defendant Guayaki Sustainable Rainforest Products, Inc.

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SONOMA**  
10

11 KIRSTIEMA COWAN, individually, and on  
behalf of other members of the general public  
12 similarly situated,

13 Plaintiff,

14 vs.

15 GUAYAKI SUSTAINABLE RAINFOREST  
PRODUCTS, INC., a California corporation,  
16

17 Defendant.

Case No. SCV 254877

**GENERAL DENIAL AND AFFIRMATIVE  
DEFENSES**

 **FAXED**

18 Complaint Filed: January 15, 2014  
19 Trial Date: None Set  
20

21 Guayaki Sustainable Rainforest Products, Inc. ("Defendant") denies each and every allegation  
22 of Plaintiffs' complaint.  
23

24 **DEFENSES AND AFFIRMATIVE DEFENSES**

25 Defendant sets forth below its defenses and affirmative defenses. Each defense and affirmative  
26 defense is asserted as to all causes of action against it. By setting forth these defenses and affirmative  
27 defenses, Defendant does not assume the burden of proving any fact, issue or element of a claim where  
28

1 such burden properly belongs to Plaintiffs. Defendant reserves the right to allege additional defenses  
2 and affirmative defenses as they become known or as they evolve during litigation.

3  
4 **FIRST DEFENSE AND AFFIRMATIVE DEFENSE**

5 Plaintiff fails to state a claim and/or sufficient facts upon which relief can be granted.

6  
7 **SECOND DEFENSE AND AFFIRMATIVE DEFENSE**

8 Plaintiff is not a real party in interest and lacks standing to seek any relief against Defendant.

9  
10 **THIRD DEFENSE AND AFFIRMATIVE DEFENSE**

11 Plaintiff's claims are barred by the doctrine of unclean hands.

12  
13 **FOURTH DEFENSE AND AFFIRMATIVE DEFENSE**

14 Plaintiff's claims are barred by the doctrine of accord and satisfaction.

15  
16 **FIFTH DEFENSE AND AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred by the applicable statutes of limitation and/or the equitable  
18 doctrine of laches.

19  
20 **SIXTH DEFENSE AND AFFIRMATIVE DEFENSE**

21 Plaintiff's purported causes of action are barred or otherwise limited to the extent that Plaintiff  
22 has failed to mitigate or avoid the purported damages alleged.

23  
24 **SEVENTH DEFENSE AND AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are preempted by federal law.

26  
27 **EIGHTH DEFENSE AND AFFIRMATIVE DEFENSE**

28 Plaintiff's claims are barred by the doctrine of primary jurisdiction.

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1 **NINTH DEFENSE AND AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are foreclosed by the First Amendment.

3  
4 **TENTH DEFENSE AND AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are precluded by actions, determinations and regulations of the Federal Trade  
6 Commission ("FTC") and the Food and Drug Administration ("FDA"). Guayaki Sustainable  
7 Rainforest Products, Inc.'s compliance with FDA and FTC regulation is a complete and/or partial  
8 defense to Plaintiff's claims.

9  
10 **ELEVENTH DEFENSE AND AFFIRMATIVE DEFENSE**

11 Plaintiff's claims are moot.

12  
13 **TWELFTH DEFENSE AND AFFIRMATIVE DEFENSE**

14 Plaintiff's purported class action claims are inappropriate as this action cannot be certified as a  
15 class.

16 Dated: March 14, 2014

CALL & JENSEN  
A Professional Corporation  
Matthew R. Orr  
Scott R. Hatch

17  
18  
19 By: Matthew R. Orr  
20 Matthew R. Orr

21 Attorneys for Defendant Guayaki Sustainable Rainforest  
22 Products, Inc.

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EST. 1981

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On March 14, 2014, I served the foregoing document described as **GENERAL DENIAL AND AFFIRMATIVE DEFENSES** on the following person(s) in the manner indicated:

L. Paul Mankin, Esq.	<b>Attorneys for</b>
Law Offices of L. Paul Mankin, IV	
8730 Wilshire Blvd., Suite 310	<b>Plaintiff Kirstiema Cowan</b>
Beverly Hills, CA 90211	
Tel: (310) 776-6336	
Fax: (323) 207-3885	
<a href="mailto:pmankin@paulmakin.com">pmankin@paulmakin.com</a>	

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☒ (BY MAIL) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call & Jensen, Newport Beach, California, following ordinary business practices.

☐ (BY FEDEX) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Call & Jensen, Newport Beach, California, following ordinary business practices.

☐ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, attached hereto, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of \_\_\_\_\_ the document described above and a copy of this declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

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JENSEN  
LLP

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct, and that this declaration was executed on March 14, 2014, at Newport Beach,  
3 California.

4   
5 Denise Reigel